

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

WITALL  
PL-I  
30318

**FILE:** B-217583

**DATE:** January 29, 1985

**MATTER OF:** Lowe Brothers Electric Co.

**DIGEST:**

Protest is dismissed as untimely where protester delayed more than 2 months after agency's opening of bids in face of oral protest to agency to file protest with GAO.

By letter filed on January 14, 1985, Lowe Brothers Electric Co. has requested our advice "on the course of actions to be taken" with regard to a protest which it mailed to the Federal Aviation Administration (FAA) on December 13, 1984. In its protest to the FAA, Lowe Brothers objected to the award of any contracts under Project DTFA 05-85-R-50368 for a medium intensity approach lighting system to be installed at the Raleigh County Memorial Airport. Lowe Brothers complained to the FAA that "the project was not adequately publicized to allow sufficient time to prepare a bid." Although it is not clear that Lowe Brothers' communication to our Office is intended as a protest, even if we consider it as a protest, it must be dismissed as untimely.

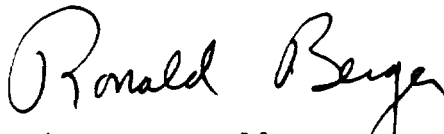
According to Lowe Brothers, it first learned of the project at the Raleigh County Memorial Airport on October 1. Lowe Brothers called the FAA Office to request drawings, but never received them. The protester called the FAA office again on October 11, the date of bid opening, to complain that it still had not received the drawings. It also apparently requested an extension of the time period for filing a bid, but its request was denied and bid opening commenced as scheduled. Two months later on December 13, the protester mailed a written protest summarizing these events to the FAA. It has apparently received no response from the FAA, and protested to our Office on January 14, 1985.

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Our regulations provide that a protest based upon an alleged impropriety in a solicitation which is apparent prior to bid opening must be filed prior to bid opening. 4 C.F.R. § 21.2(b) (1984). The December 13 written protest to the agency obviously does not meet that requirement. While it appears that Lowe Brothers may have made a timely oral protest to the agency, that protest in effect was answered when the agency opened bids in the face of Lowe Brothers' objection. Our procedures require that if a protest is filed with the contracting agency any subsequent protest to our Office must be filed within 10 days after the protester knows of initial adverse action on the protest filed with the agency. 4 C.F.R. § 21.2(a). Since the bid opening constituted that adverse agency action, the letter filed here on January 14 does not constitute a timely protest.

The protest is dismissed.



for the Comptroller General  
of the United States